

STATE OF DELAWARE,)
)
Plaintiff,)
) Case No.: 1701000032
v.)
)
JALEEL CARTER,)
)
Defendants.)

Upon consideration of Defendant's Motion for Reduction/Modification of Sentence, Superior Court Criminal Rule 35, statutory and decisional law and the record in this case, IT APPEARS:

1. On August, 16, 2017, a jury found the defendant guilty of Burglary in the Second Degree and Resisting Arrest. On October 27, 2017, the Defendant was sentenced as to Burglary Second Degree 25 years at Level 5 suspended after 8 years at Level 5, follow by 7 years of supervision Level 4 work release suspended after 6 months at Level 4 for work release for 2 years, supervision at Level 3 to be held at supervision Level 5 until space was available at supervision Level 4. As to this charge, the defendant was declared a Habitual Offender and was sentenced pursuant to 11 *Del.C.* §4214(c). As to the resisting arrest conviction the defendant was sentence for one year Level 5 suspended for one year at Level 3. The probations were to run concurrent.
2. On June 4, 2020, the Defendant filed the instant motion, asking the Court to suspend his remaining Level 5 time (approximately 5 more years) and move him to Level 4 Home Confinement. Defendant cites his substance abuse issues, his rehabilitation efforts and the presence of Covid-19 at JTVCC.
3. Superior Court Criminal Rule 35 governs Motions for Modifications of Sentence. Rule 35(b) requires that an application to reduce imprisonment be filed promptly; i.e. within 90 days of the sentence's imposition; 'otherwise,

the Court loses jurisdiction to act thereon.’¹ An exception to this bar exists: to overcome the 90-day time limitation, an inmate seeking to reduce a sentence of imprisonment on his own motion must demonstrate “extraordinary circumstances”² A heavy burden is placed on the inmate to establish “extraordinary circumstances in order to uphold the finality of sentences.”³

4. The term “extraordinary circumstance” is generally defined as “a highly unusual set of facts that are not commonly associated with a particular thing or event.”⁴ For purposes of Rule 35(b), ‘extraordinary circumstances have been found only when an offender faces some genuinely compelling change in circumstances that makes a resentencing urgent’.⁵ In short, Rule 35(b) is a rule limited to reconsideration and altering of a sentence after the 90-day motion deadline “only when there is a truly compelling change in that inmates’ individual circumstances that presents an urgent need for revision of the sentence terms”.⁶
5. Defendant’s rehabilitation effort and good behavior and the need for substance abuse treatment outside of Level 5 do not constitute “extraordinary circumstances.”⁷
6. Defendant’s general concern about the existence of Covid-19 and difficulty of social distancing at Level 5 is also not a sufficient showing of an ‘extraordinary circumstance’.⁸
7. In addition, this Motion was filed well beyond the ninety (90) days from the imposition of Defendant’s sentences, and it is therefore time-barred under Rule 35(b).
8. Defendant’s sentences are appropriate for all the reasons stated at the time of his sentencing. No additional information has been provided to the Court that would warrant a reduction or medication of Defendant’s sentences.

¹ *State of Delaware v. Daniel T. Redden*, 111 A.3d 602, 606 (Del. Super. Ct. 3015).

² *Armon R. Sample v. State of Delaware*, 2012 WL 193761 (Del. Jan 23, 2012).

³ *State of Delaware v. Daniel Diaz*, 2015 WL 1741768 (Del. Apr 15, 2015).

⁴ *State of Delaware v. Daniel Diaz*, 2015 WL 1741768 (Del. Apr 15, 2015).

⁵ *State of Delaware v. Damien Thomas*, 220 A3d 257, 262 (Del. Super. Ct. 2019).

⁶ *State of Delaware v. Michael J. Lindsey*, 2020 WL 4038015 (Del. Super. Ct. July 17, 2020).

⁷ *State of Delaware v. Catherine W. Culp*, 152 A.2d 141, 145-46 (Del. 2015).

⁸ *State of Delaware v. Charles R. Colburn*, 2020 WL 3882560 (Del. Super. Ct. July 8, 2020) and *State of Delaware v. William B. Baker*, 2020 WL 2789703, at 1 (Del., Super. Ct., May 29, 2020).

NOW, THEREFORE, IT IS HEREBY ORDERED that Defendant's Motion for Reduction/Modification of Sentence is **DENIED**.

/s/ Francis J. Jones, Jr.
Francis J. Jones, Jr., Judge

Dated: August 12, 2020
Wilmington, Delaware

/jb

cc. Mr. Jaleel Carter, James T. Vaughn Correctional Center
Erika Flaschner, Deputy Attorney General